

DAVID R. EBERHART (S.B. #195474)  
deberhart@omm.com  
JAMES K. ROTHSTEIN (S.B. #267962)  
jrothstein@omm.com  
DANIEL H. LEIGH (S.B. #310673)  
dleigh@omm.com  
O'MELVENY & MYERS LLP  
Two Embarcadero Center  
28<sup>th</sup> Floor  
San Francisco, California 94111-3823  
Telephone: +1 415 984 8700  
Facsimile: +1 415 984 8701

Attorneys for Plaintiffs  
ELASTICSEARCH, INC. and  
ELASTICSEARCH B.V.

JOSEPH C. GRATZ (S.B. #240676)  
jgratz@durietangri.com  
ADITYA V. KAMDAR (S.B. #324567)  
akamdar@durietangri.com  
SAMUEL J. ZEITLIN (S.B. #327369)  
szeitlin@durietangri.com  
DURIE TANGRI LLP  
217 Leidesdorff Street  
San Francisco, CA 94111  
Telephone: +1 415 362 6666  
Facsimile: +1 415 236 6300

Attorneys for Defendants  
AMAZON.COM, INC. and  
AMAZON WEB SERVICES, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ELASTICSEARCH, INC., a Delaware  
corporation, and ELASTICSEARCH B.V., a  
Dutch corporation,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware corporation,  
and AMAZON WEB SERVICES, INC., a  
Delaware corporation,

Defendants.

Case No. 5:19-cv-06158-EJD

**STIPULATION AND [PROPOSED] ORDER  
TO MODIFY CASE SCHEDULE;  
DECLARATION OF JOSEPH C. GRATZ**

Ctrm: 4, 5<sup>th</sup> Floor  
Judge: Honorable Edward J. Davila

1 Pursuant to Civil Local Rules 6-1(b) and 6-2, Plaintiffs Elasticsearch, Inc. and elasticsearch B.V.  
2 (“Plaintiffs”) and Defendants Amazon.com, Inc. and Amazon Web Services, Inc. (“Defendants”), by and  
3 through their attorneys of record, stipulate and request as follows:

4 WHEREAS, the Court entered a Case Management Order on January 22, 2020 (Dkt. No. 26), and  
5 the Court, pursuant to the parties’ stipulations, entered Orders to Modify the Case Schedule on June 17,  
6 2020 (Dkt. No. 28), September 24, 2020 (Dkt. No. 30), December 4, 2020 (Dkt. No. 32), March 29, 2021  
7 (Dkt. 34), and June 24, 2021 (Dkt. No. 36);

8 WHEREAS Defendants on April 12, 2021 launched OpenSearch, a fork of Elasticsearch source  
9 code licensed under the Apache 2.0 license that uses branding that does not incorporate the  
10 ELASTICSEARCH mark;

11 WHEREAS Defendants on June 25, 2021 announced that the Open Distro for Elasticsearch project  
12 website would be selectively decommissioned and that all future project updates would be available on  
13 the OpenSearch website under the OpenSearch name;

14 WHEREAS Defendants, on September 8, 2021 renamed Amazon Elasticsearch Service to Amazon  
15 OpenSearch Service;

16 WHEREAS the renaming of September 8, 2021, combined with the aforementioned changes,  
17 provides to the parties sufficient factual clarity regarding Defendants’ intended usages to determine  
18 quickly whether the parties may reach a full resolution of Plaintiffs’ claims; accordingly, the parties do  
19 not expect that further continuances of the Case Management Schedule will be necessary;

20 WHEREAS the parties respectfully submit that continuing the existing deadlines in this case while  
21 the parties continue to engage in substantive settlement discussions would serve the interests of judicial  
22 economy, minimize the burden and expense of discovery on the parties, and maximize the opportunity  
23 for settlement and the efficient progress of this litigation;

24 WHEREAS the parties respectfully submit that good cause exists to continue the existing deadlines  
25 by ten weeks to minimize use of the Court’s time and costs to the parties while the parties continue to  
26 conduct productive settlement discussions;

27 WHEREAS the parties expect that, should their settlement talks not resolve this matter in its  
28 entirety, they will meet the case deadlines proposed below;

NOW, THEREFORE, the parties, through their respective counsel, hereby stipulate to and respectfully request that the Court order the following modifications to the case management and pretrial dates:

Event	Current Deadline	New Deadline
Joint Trial Setting Conference Statement (see Section III(C)(2) of Standing Order for Civil Cases)	September 20, 2021	December 6, 2021
Trial Setting Conference (see Section III(C)(1) of Standing Order for Civil Cases)	September 30, 2021	December 16, 2021
Fact Discovery Cutoff	November 3, 2021	January 12, 2022
Designation of Opening Experts with Reports	November 24, 2021	February 2, 2022
Designation of Rebuttal Experts with Reports	December 22, 2021	March 2, 2022
Designation of Reply Experts with Reports	January 5, 2022	March 16, 2022
Expert Discovery Cutoff	January 19, 2022	March 30, 2022
Deadline(s) for Filing Discovery Motions	<u>See</u> Civil Local Rule 37-3	<u>See</u> Civil Local Rule 37-3
Deadline to Complete Private Mediation	February 9, 2022	April 20, 2022
Deadline for Filing Dispositive Motions (see Section IV and V of Standing Order for Civil Cases)	March 11, 2022	May 20, 2022
Deadline for Filing Opposition(s) to Dispositive Motions	April 15, 2022	June 24, 2022
Deadline for Filing Reply(ies) to Dispositive Motions	May 6, 2022	July 15, 2022
Hearing on Anticipated Dispositive Motion(s)	June 23, 2022	September 1, 2022

**IT IS SO STIPULATED.**

Dated: September 16, 2021

DAVID R. EBERHART  
JAMES K. ROTHSTEIN  
DANIEL H. LEIGH  
O'MELVENY & MYERS LLP

By: /s/ David R. Eberhart  
David R. Eberhart

Attorneys for Plaintiffs  
ELASTICSEARCH, INC. and  
ELASTICSEARCH B.V.

Dated: September 16, 2021

JOSEPH C. GRATZ  
ADITYA V. KAMDAR  
SAMUEL J. ZEITLIN  
DURIE TANGRI LLP

By: /s/ Joseph C. Gratz  
Joseph C. Gratz

Attorneys for Defendants  
AMAZON.COM INC. and  
AMAZON WEB SERVICES

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Edward J. Davila  
United States District Judge

**FILER'S ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), I attest that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

Dated: September 16, 2021

/s/ Joseph C. Gratz  
JOSEPH C. GRATZ

**DECLARATION OF JOSEPH C. GRATZ**

I, Joseph C. Gratz, hereby declare:

1. I am a partner at Durie Tangri LLP, counsel of record for Defendants Amazon.com, Inc. and Amazon Web Services, Inc. I make this declaration based on my own personal knowledge. If called as a witness, I could and would testify under oath to the matters set forth within.

2. Defendants on April 12, 2021 launched OpenSearch, a fork of Elasticsearch source code licensed under the Apache 2.0 license. This fork was announced earlier this year, on January 14, 2021, in response to an announcement by Plaintiffs that they would be changing the license terms of their products. The OpenSearch project is the new home for plugins and features previously distributed with Open Distro for Elasticsearch, an open-source project that is no longer in development. On June 25, 2021, Defendants noted that the Open Distro for Elasticsearch website would be selectively decommissioned and that all future project updates would be available on the OpenSearch website under the OpenSearch name.

3. On September 8, 2021, Defendants renamed Amazon Elasticsearch Service to Amazon OpenSearch Service, given that this managed service would support the new OpenSearch fork.

4. The parties remain actively engaged in substantive settlement discussions that seek to resolve this dispute in its entirety. The renaming of September 8, 2021, combined with the aforementioned changes, provides to the parties sufficient factual clarity regarding Defendants' intended usages to determine quickly whether the parties may reach a full resolution of Plaintiffs' claims

5. There have been six previous time modifications in this case: (1) on October 22, 2019, pursuant to the parties' stipulation, Defendants received extended time to respond to the complaint on or before November 20, 2019 (Dkt. No. 16); (2) on June 17, 2020, pursuant to the parties' stipulation, the Court continued all case management deadlines by approximately 90 days in light of the COVID-19 pandemic (Dkt. No. 28); (3) on September 24, 2020, pursuant to the parties' stipulation, the Court continued all case management deadlines by approximately 90 days in light of the parties' ongoing substantive settlement discussions; (4) on December 4, 2020, pursuant to the parties' stipulation, the Court continued all case management deadlines by approximately 112 days in light of the parties' ongoing substantive settlement discussions (Dkt. No. 32); (5) on March 29, 2021, pursuant to the parties'

1 stipulation, the Court continued all case management deadlines by approximately 90 days in furtherance  
2 of the parties' licensing changes and rebranding announcements as well as the parties' ongoing  
3 substantive settlement discussions; and (6) on June 24, 2021, pursuant to the parties' stipulation, the  
4 Court continued all case management deadlines by approximately 90 days in furtherance of Defendants'  
5 then-forthcoming rebranding changes and the parties' ongoing substantive settlement discussions.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
7 true and correct. Executed this September 16, 2021 at San Francisco, California.

8  
9  
10 */s/ Joseph C. Gratz*

11 \_\_\_\_\_  
12 JOSEPH C. GRATZ  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2021 the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the attorneys of record in this case.

*/s/ Joseph C. Gratz*

JOSEPH C. GRATZ